SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1948

Office Supreme Court, U.S.
FILED
MAR 17 1949
CHARLES ELMORE CROPLEY
CLERK

No. 649

LONGYEAR HOLDING COMPANY, A CORPORATION, HELEN H. BENNETT, C. M. HILL LUMBER COMPANY, A CORPORATION, THE ADAMS CORPORATION, A CORPORATION, HAROLD W. McCORMACK, JOHN ANDREW PETERSON, FANNIE E. DANIELS, ANNIE E. DANIELS, MINNIE DANIELS MANN, JENNIE D. CAMP, ANN R. HESS, WILLIAM R. DANIELS, LANCAS IRON COMPANY, A CORPORATION, THE NORTH STAR IRON COMPANY OF WEST VIRGINIA, A CORPORATION, SAGINAW LAND COMPANY, A CORPORATION, HELEN EMERSON JAMISON, FRANCES SELLWOOD LUSTER, R. M. SELLWOOD, JR., AND JOSEPH GERALD SELLWOOD,

Appellants,

vs.

STATE OF MINNESOTA

APPEAL FROM THE SUPREME COURT OF THE STATE OF MINNESOTA

APPELLEE'S STATEMENT OPPOSING JURISDICTION AND MOTION TO DISMISS

J. A. A. BURNQUIST,
Attorney General;
GEORGE B. SJOSELIUS,
Deputy Attorney General;
WM. C. GREEN,
Special Assistant Attorney General,
State of Minnesota,
Counsel for Appellee,
102 State Capitol,
Saint Paul, Minnesota.



BLEED THROUGH – POOR COPY

COP

INDEX

	Page
Motion to dismiss	1
Statement in support of motion to dismiss and in opposition to the jurisdiction of this Court	2
Statement of the case	2
Statutory provisions claimed to sustain jurisdiction	4
Statutes of the State claimed to be involved	4
Date of judgment and application for appeal	4
Cases claimed by appellants to sustain the jurisdiction	4
Raising the Federal questions and rulings thereon by the courts below	5
Statement of grounds upon which it is contended that the questions involved are substantial	13
Conclusion	20

Cases Cited

Brinkerhoff-Faris Trust & Savings Co. v. *Hill*, 281 U. S. 673	14
Brisbine v. *Ry. Co.*, 23 Minn. 114	16
Carpenter v. *Board of Commissioners*, 56 Minn. 513, 520	19
Gilbert v. *Eldridge*, 47 Minn. 210	17
Hanford v. *St. Paul & Duluth R. Co.*, 43 Minn. 104, 112, 117	15, 18
Honeyman v. *Homan*, 300 U. S. 14	12
Lamprey v. *State*, 52 Minn. 181	15
Lynch v. *New York*, 293 U. S. 52, 54	12
Miller v. *Mendenhall*, 43 Minn. 95	17
Morrill v. *St. Anthony Falls Water Power Co.*, 26 Minn. 222	16
Nelson v. *DeLong*, 213 Minn. 425, 431	17
Petraborg v. *Zontelli*, 217 Minn. 536, 547, 548	18
Pollard v. *Hagen*, 44 U. S. (How.) 212	7
Rooker v. *Fidelity Trust Co.*, 261 U. S. 114	12
St. Paul S. & T. F. R. Co. v. *First Division, etc. R. Co.*, 26 Minn. 31	16

COPY BOUND CLOSE IN CENTER

Page

Schurmeier v. *St. Paul and Pacific Railroad Co.*, 19 Minn. 82 (Gil. 59) 16
Scott v. *Lattig*, 227 U. S. 1 7
Shell v. *Matteson*, 81 Minn. 38 ..... 8, 15
Shively v. *Bowlby*, 152 U. S. 1 7
Southwestern Bell Telephone Co. v. *State of Oklahoma*, 303 U. S. 206, 212 12
State v. *Cavour Mining Co.*, 143 Minn. 271 19
State v. *Evans*, 99 Minn. 220 19
State v. *Korrer*, 127 Minn. 60, 72 15
State v. *St. Paul & Duluth R. Co.*, 81 Minn. 422, 425 18
Tidal Oil Co. v. *Flannagan*, 263 U. S. 444 11
Union Depot St. Ry. Tr. Co. v. *Bruswick*, 31 Minn. 297 15
United States v. *Holt State Bank*, 270 U. S. 49 15
7 Wall. 272, 288, 289 16

STATUTES AND CONSTITUTIONAL PROVISIONS CITED

United States Constitution, Art. 1, Sec. 10 ..... i0, 11, 12
Minnesota Laws of 1909, Chapter 49 ..... 6, 7, 10
Minnesota Laws of 1917, Chapter 110 ..... 8, 9
United States Code, Title 28, Section 1257 (2) 4, 12
Judicial Code, Sec. 237, as amended 11

BLEED THROUGH – POOR COPY COP

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1948

No. 649

STATE OF MINNESOTA,

Appellee,

vs.

LONGYEAR HOLDING COMPANY, A CORPORATION, ET AL.,

Defendants,

LONGYEAR HOLDING COMPANY, A CORPORATION, HELEN H. BENNETT, C. M. HILL LUMBER COMPANY, A CORPORATION, THE ADAMS CORPORATION, A CORPORATION, HAROLD W. McCORMACK, JOHN ANDREW PETERSON, FANNIE E. DANIELS, ANNIE E. DANIELS, MINNIE DANIELS MANN, JENNIE D. CAMP, ANN R. HESS, WILLIAM R. DANIELS, LANCAS IRON COMPANY, A CORPORATION, THE NORTH STAR IRON COMPANY OF WEST VIRGINIA, A CORPORATION, SAGINAW LAND COMPANY, A CORPORATION, HELEN EMERSON JAMISON, FRANCES SELLWOOD LUSTER, R. M. SELLWOOD, JR., AND JOSEPH GERALD SELLWOOD,

Appellants

APPEAL FROM THE SUPREME COURT OF THE STATE OF MINNESOTA

APPELLEE'S STATEMENT OPPOSING JURISDICTION AND MOTION TO DISMISS

Motion to Dismiss

The appellee moves the Court to dismiss the appeal herein on the ground that it has no jurisdiction for the reasons following:

OPY BOUND CLOSE IN CENTER

1. That there is not drawn in question by this appeal the validity of a statute of any State on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, and the decision of the Supreme Court of Minnesota is not in favor of the validity of any such law.

2. The Court is without jurisdiction because no substantial Federal question is raised by the appeal.

3. That the decision of the Supreme Court of Minnesota is sustainable upon nonfederal grounds sufficient to support it.

This motion is filed by the appellee pursuant to paragraph 3 of Rule 12 of this Court in response to the statement as to jurisdiction and other papers filed by the appellants, which urged this Court to review on appeal the judgment entered by the court below.

Statement in Support of Motion to Dismiss and in Opposition to the Jurisdiction of This Court

The appellants attempt to appeal from a final judgment of the Supreme Court of the State of Minnesota affirming a judgment of the district court of St. Louis county, Minnesota.

This Court has jurisdiction only if the decision and judgment of the Minnesota court were based upon statutes of the State of Minnesota, if such statutes were repugnant to the Constitution of the United States and if the decision was in favor of their validity.

Statement of the Case

Appellants open their statement of the case with the statement:

> "This case involves the ownership of the *alienable, proprietary,* beneficial rights and uses in some 33 acres of land in St. Louis County, Minnesota, which had

BLEED THROUGH – POOR COPY

formerly been the bed of a small shallow body of water known as 'Syracuse Lake' " (Statement as to jurisdiction p. 2).[1]

This statement is not correct. What was found by the trial court and determined by the Supreme Court of Minnesota was, in substance, as stated by the Minnesota court in its opinion (Statement as to jurisdiction, appendix, p. 67; 224 Minn. 456; second record in court below, pp. 7-8):

> "That Syracuse Lake at the time of Minnesota's admission to the Union was part of a navigable highway extending from the mouth of the St. Louis river to Lake of the Woods; hence that the state retained or reserved title to the bed thereof below low-water mark and now holds the same in its sovereign governmental capacity in trust for the people of the state, although not in absolute proprietorship with right of alienation; that the state is the owner of iron ores and other minerals on, in, or below certain water mark of the lake, with the right to dispose of the same by lease subject only to the prior lease and agreement held by Lake Mining Company hereinbefore described and that none of the riparian owners are entitled to receive or to be paid any royalties or other compensation for the ore removed from said portion of the lake bed."[2]

The decision presented for review is not to be measured by the claims of the appellee, nor by assertions of appellants in their answers or briefs, but by the decision of the Supreme Court of Minnesota. For this reason, rather than tax the patience of the Court with a further extended sentence by sentence correction of appellants' so-called "statement of facts", appellee will stand upon the statement of facts as set out in the opinion of the Minnesota

---

[1] All emphasis in this statement supplied unless otherwise noted.

[2] It is not disputed that the lease to the Lake Mining Company referred to was a lease from the State. (Statement as to jurisdiction, p. 4.)

COPY BOUND CLOSE IN CENTER

Supreme Court. (Statement as to jurisdiction, appendix pp. 66-70; 71-75; 224 Minn. 455-458; 460-462; second record in court below p. 6-11; 15-20).

Statutory Provisions Claimed to Sustain Jurisdiction

(Statement as to jurisdiction p. 8)

Appellants have by their statement rested their right to appeal upon Title 28, U. S. Code, Section 1257 (2), as enacted effective September 1, 1948, by public law 773—80th Congress. The first ground of respondent's motion for dismissal is that appellants have not brought themselves within that statute.

Statutes of the State Claimed to Be Involved

(Statement as to jurisdiction pp. 8-10)

It is the position of appellee that the decision of the Minnesota Supreme Court is not based upon the statutes cited by appellants in their statement as to jurisdiction, but upon the common law as announced and elucidated by the Supreme Court of the United States and as interpreted by the Supreme Court of Minnesota. This position will be further argued *infra*.

Date of Judgment and Application for Appeal

(Statement as to jurisdiction pp. 10-11)

Appellee does not dispute the statements of appellants under this heading.

Cases Claimed by Appellants to Sustain the Jurisdiction

(Statement as to jurisdiction p. 11)

Appellee contends, and will point out *infra*, that the cases cited by appellants do not sustain the jurisdiction of the Court.

BLEED THROUGH – POOR COPY

Raising the Federal Questions and Rulings Thereon by the Courts Below

(Statement as to jurisdiction pp. 12-19)

As to the matters set forth under this heading, the position of respondent is:

1. Appellants by their pleadings and assignment of error probably sufficiently raised the Federal questions claimed by them to exist in the court below.

2. Even under the isolated quotations from appellee's brief in the court below, it is apparent that appellee did not rely upon the statutes in question except as a legislative declaration of what was already established law of the State. There is nothing in the original complaint to indicate that its claim is based upon those statutes. The complaint is phrased in the ordinary language of a complaint in an action to determine adverse claims. It alleges (original record in lower court p. 2):

> "That plaintiff is the owner in fee simple of the following described lands situate in the county of St. Louis, State of Minnesota, to-wit:
>
> "That portion of the bed of said Syracuse Lake, below low-water mark as shown and delineated on the blueprint hereto attached marked Exhibit 'A' and made a part hereof as fully as though herein incorporated; is the sole owner of all iron ores and other minerals on, in, or under said lands together with the right to enter upon said lands and explore for and mine and remove such iron ore and other minerals, and has and *ever since the organization of the State of Minnesota* has had the right to sell, lease, or otherwise use or dispose of such lands and such iron ores or other minerals, and has the right to provide for the drainage of said Syracuse Lake, or the diversion of its waters to a new bed or channel in order to per-

COPY BOUND CLOSE IN CENTER

mit the prospecting for and mining, removal, and disposition of said iron ore and other minerals, which drainage shall not affect the aforesaid title or rights of the plaintiff; subject only to such rights as have been granted in and as defined in paragraph IV hereof (Lake Mining Company lease)."

The prayer is to like effect. Under it appellee was entitled to claim whatever rights it enjoyed under the common law and to reenforce that claim by reference to statutes, as it saw fit. The question now for determination is what was the ultimate decision of the Minnesota Supreme Court and upon what ground was that decision based.

3. The original memorandum of the district court (Statement as to jurisdiction appendix pp. 51-60) and its supplemental memorandum (Statement as to jurisdiction appendix pp. 60-63), if material, make it clear that the decision of that court was based upon the common law and prior decisions of the Supreme Court of Minnesota and that Minnesota laws 1909, c. 49, was simply referred to as a legislative declaration of what was at the time of its enactment the settled law of the State.

4. The reference on p. 17 of the statement as to jurisdiction to that portion of the opinion of the Minnesota Supreme Court (Statement as to jurisdiction appendix 81; 224 Minn. 469; second record in court below p. 29) using the language "have been cut off before their consummation by the foregoing legislative enactments", is misleading because the context shows clearly that the court was dealing only with the matter of accretions and relictions, which are wholly a matter of State control. The complete language of the sentence from which the partial quotation has been taken is:

BLEED THROUGH – POOR COPY

"Likewise, since the rights of these riparian owners to future accretions and relictions are contingent only, it is apparent that they have been cut off before their consummation by the foregoing legislative enactments."

5. The opinion of the Supreme Court of Minnesota clearly demonstrates that its decision was not based upon Minnesota Laws 1909, c. 49, but upon its construction of the common law, and that any references to the statute in question were merely by way of demonstrating that the legislature of Minnesota had never made any enactment or grant vesting riparian owners with any interest in the beds of navigable lakes, but had constantly and consistently affirmed the right of the State to ore lands under the beds of navigable lakes or streams. This is shown by the following excerpts from the opinion of the court after citing *Pollard* v. *Hagan*, 44 U. S. (How.) 212, *Shively* v. *Bowlby*, 152 U. S. 1, and *Scott* v. *Lattig*, 227 U. S. 229 in support of the statement:

"It is well settled that upon admission of a state to the Union title to the beds of all navigable waters therein remains in the state, the federal government taking no title or interest therein except under its power to regulate commerce between the states."

"It follows that the riparian owners here acquired no title to the bed of Syracuse Lake below low-water mark by virtue of the patents issued to them or their predecessors by the United States covering lands adjoining this navigable lake. Under the decisions of this court, it seems equally clear that they did not acquire any right or *beneficial* interest in and to the bed of this lake, other than (1) the ordinary riparian rights of navigation, dockage, wharfage and similar privileges or (2) those contingent rights or privileges resulting from the doctrine of *accretions and relictions*". (Italics in this quotation by the court)

COPY BOUND CLOSE IN CENTER

Then, following a discussion of prior Minnesota decisions, the court said:

> "Under the foregoing Minnesota decisions, it is clear that the riparian owners here can claim no title whatsoever to the bed under Syracuse Lake unless the State by legislative grant has relinquished its title to the riparian owners or unless they have gained a portion thereof as the result of accretions and relictions. There is no contention here by the riparian owners that the state either by legislative grant or by act of grace has ever relinquished to them its title to the bed of Syracuse Lake."

The court then discussed the doctrine of accretions and relictions and held that in the instant case the riparian owners could not rest their claims on that doctrine.

The opinion then proceeds:

> "It is equally clear that there has been no legislative enactment or grant vesting these shore owners with any interest in the portion of the lake bed involved. On the contrary, the acts of the legislature with reference thereto have been exactly to the opposite effect. It has consistently and constantly affirmed the right of the State to ore lands under the beds of navigable lakes and streams."

Then after citing the various statutes of Minnesota with reference to iron ore and the ownership of lake beds, including Minnesota Laws 1909, c. 49, and Minnesota Laws 1917, c. 110, the court said:

> "The foregoing enactments, which comprise all the laws on this subject enacted by our legislature since statehood (except Laws 1897, c. 257, declared unconstitutional in *Shell* v. *Matteson*, 81 Minn. 38, 83 N. W. 491), established clearly the state's intention of reserving the title and beneficial ownership of such lake beds in itself. Certainly nothing therein can be con-

BLEED THROUGH – POOR COPY COPY

strued as a legislative grant thereof to the riparian owners."

(Statement as to jurisdiction appendix p. 81; 224 Minn. 463-469; second record in court below pp. 20-29)

Up to this point, the court had reached the conclusion that it was clear that the riparian owners (appellants here) could assert no right, title or interest in or to the ore under the bed of Syracuse Lake below the low water mark by virtue of

(a) patents issued by the United States to the adjoining lands;

(b) any decision of the courts of this state;

(c) any legislative enactment or grant; or

(d) the doctrine of accretions and relictions.

(Statement as to jurisdiction appendix p. 81; 224 Minn. 463-469; second record in court below pp. 20-29)

The following language of the opinion which deals with the nature of the state's title to the lake bed and the question whether thereunder it has the right to remove and dispose of the ore under that bed makes it patent that the decision of the court on that question, which affirmed the rights of the state, is based entirely upon the decisions of the Supreme Court of the United States and upon its own. The only reference to the statutes referred to by appellants is to Laws 1917, c. 110, and subsequent statutes, and that is found in the final paragraph of the opinion which reads:

"The foregoing authorities indicate that the state, under proper statutory authority, may provide for the removal of ore beneath the beds of its navigable waters. The statutory authority in the instant case is conferred by L. 1917, c. 110, and subsequent statutes cited *supra*, under which these operations have taken place. Here,

COPY BOUND CLOSE IN CENTER

there is no attempt to deprive riparian owners or the public of their rights to navigation or other public uses in the waters involved or to take from such shore owners their property without due process of law. We have consistently held that the latter have no property beyond the low-water mark other than their rights incidental to navigation, wharfage, and other like uses. There has been no grant from the legislature conferring upon them any rights in this lake bed. The legislature has repeatedly declared title to such lands to be in the state, with the right in the latter to remove ore therefrom. Such removal is consistent with the state's sovereign title, as defined by the common law in existence at the time Minnesota was admitted to statehood, and in subsequent interpretations thereof both by the United States Supreme Court and by this court. It is not in conflict with the trust theory under which it holds title to such lands, nor its duty as trustee to exercise such trust for the greatest good of all the people."

(Statement as to jurisdiction appendix p. 89; 224 Minn. 478; second record in lawer court pp. 42-43)

There is no reference in the portions of the opinion dealing with the rights of the state to Laws 1909, c. 49; and Laws 1917, c. 110, and subsequent statutes are merely procedural statutes providing methods for entering into contracts for the mining and disposing of iron ore situate under any waters or navigable lakes and rivers in the state of Minnesota. These statutes do not purport to establish the title of the state in or to such lake or river beds.

6. Insofar as there is attempted to be claimed any violation of contract rights under Article I, section 10 of the Constitution of the United States, that claim is without merit, because that section of the federal constitution is directed only against an impairment by legislative action and

BLEED THROUGH – POOR COPY

not against any judicial decision or change in judicial decision.

In *Tidal Oil Co.* v. *Flannagan*, 263 U. S. 444, which came up on error to the Supreme Court of Oklahoma, the claim was made that the judgment of the Oklahoma court deprived defendants of their property without due process of law, contrary to the Fourteenth Amendment, and that the Supreme Court of the state, in holding a judgment and certain confirmations to be void, reversed its previous decisions and changed a rule of property of the state upon the faith of which a deed, leases, and other contracts set up by the defendant were made, and thus impaired their obligations in violation of Section 10, Article I, of the federal Constitution.

One of the grounds of the motion to dismiss having been that the federal questions were raised too late, the Court held that the objection based on the Fourteenth Amendment did not come too late because it appeared in the assignment of errors filed on the appeal from the district court to the state supreme court. However, this Court said:

> "The assignment, however, has no substance in it. The parties to this action have been fully heard in the state court in the regular course of judicial proceedings; and in such a case the mere fact that the state court reversed a former decision to the prejudice of one party does not take away his property without due process of law." (citing numerous cases)

Discussing the 1922 amendment to Section 237 of the judicial code (act Feb. 17, 1922), c. 54, 42 Stat. 366, which was repealed by Section 13 of act February 13, 1925, c. 229, the Court said further:

> "We cannot assume that congress attempted to give to this court appellate jurisdiction beyond the judicial power accorded to the United States by the Constitu-

COPY BOUND CLOSE IN CENTER

> tion. The mere reversal by a state court of its previous decision, as in the case before us, whatever its effect on contracts, does not, as we have seen, violate any clause of the federal Constitution. Plaintiff's claim, therefore, does not raise a substantial federal question. This has been decided in so many cases that it becomes our duty to dismiss the writ of error for want of jurisdiction."

With reference to the claim that the decision of the state court violated the provisions of Section 10, Article I, of the federal Constitution, the Court said:

> "It has been settled by a long line of decisions that the provisions of Section 10, Article 1, of the federal Constitution, protecting the obligation of contracts against state action, is directed only against impairment by legislation and not by judgments of courts."

See also *Rooker* v. *Fidelity Trust Co.*, 261 U. S. 114.

7. Since it does not appear affirmatively from the record that a decision by the Supreme Court of Minnesota of the federal question attempted to be raised was necessary to the determination of this case; that such federal question was actually decided, or that the judgment as rendered could not have been given without deciding it, appellants have no right of appeal under Title 28, U. S. Code Section 1257 (2), as enacted effective September 1, 1948, by public law 773—80th Congress.

Southwestern Bell Telephone Co. v. *State of Oklahoma*, 303 U. S. 206, 212;
Honeyman v. *Homan*, 300 U. S. 14;
Lynch v. *New York*, 293 U. S. 52, 54.

BLEED THROUGH – POOR COPY

Statement of Grounds Upon Which It Is Contended That the Questions Involved Are Substantial

The whole argument of appellants under this heading is epitomized in the statement appearing at p. 37 of the statement as to jurisdiction as follows:

> "By giving effect to Minnesota Laws of 1909, Chapter 49, and Laws of 1917, Chapter 110, the decision of the District Court, affirmed by the Minnesota Supreme Court, if permitted to stand, impairs the obligations of appellants' contracts and deprives appellants of their property without due process of law. The decision, as it stands, opens the way for the appropriation by the State of many hundreds of millions of dollars of what heretofore has uniformly been held to be private property. There is left no apparent limit to the power of the legislature to seize and use for private exploitation and without compensation to the owners, private rights of every sort heretofore vested under established Minnesota law."

Their entire claim is bottomed upon the proposition last discussed. They reiterate that the decision of the Minnesota Supreme Court was based upon the 1909 act, and that prior to the enactment of that legislation it had been conceded by the Minnesota court that title to the beds of navigable lakes was vested in the riparian owners. The fallacy of the first claim has already been pointed out. The second claim is similarly without foundation. They repeat the argument that the instant decision is contrary to the prior decisions of the Minnesota court, and that under prior decisions their rights were established to such an extent that the present decision amounts to deprivation of property rights, in violation of the due process clause of the federal Constitution. Even if it be conceded that the present decision overrules prior decisions—which, of course, is not conceded and is violently disputed by the

COPY BOUND CLOSE IN CENTER

opinion of the Minnesota court—appellants can find no consolation in the decisions of this Court. As stated in *Brinkerhoff-Faris Trust & Savings Co.* v. *Hill*, 281 U. S. 673:

> "It is true that the courts of a state have the supreme power to interpret and declare the written and unwritten laws of the state; that this Court's power to review decisions of the supreme courts is limited to their decisions on federal questions; and that the mere fact that a state court has rendered an erroneous decision on a question of state law, or has overruled principles or doctrines established by previous decisions on which a party relied, does not give rise to a claim under the Fourteenth Amendment or otherwise confer appellate jurisdiction on this Court."

However, appellee respectfully submits that not a single Minnesota case can be found holding that a riparian owner has any alienable or proprietary rights in the bed of a navigable lake below low-water mark, or any beneficial rights or uses beyond the ordinary riparian rights of navigation, dockage, wharfage and similar privileges, and the contingent rights or privileges resulting from the doctrine of accretions and relictions, and that under all prior decisions even the ordinary riparian rights cease at the point of navigability[3].

It is not clear whether appellants question the decision of the Minnesota court as to the navigability of Syracuse Lake. That court adopted the federal test of navigability (Statement as to jurisdiction appendix pp. 70-73; 224 Minn. 458-460; second record in court below pp. 12-15).

Under the rules stated in the cases from this Court cited by the Minnesota court, as stated by the latter court, "it cannot be seriously disputed that the evidence admitted at

---

[3] No claim of any distinction between low-water mark and the point of navigability is made in this case.

BLEED THROUGH – POOR COPY

the trial herein is sufficient to sustain the trial court's finding that Syracuse Lake at the time of Minnesota's admission to statehood was part of a navigable waterway." (See Statement as to jurisdiction appendix p. 72; 224 Minn. 460-463; second record in court below pp. 15-20.)

Appellants admit that if the waters were navigable under the federal tests, the effect of the patents and conveyances and the respective and relative rights and interests of the state and of the lot owners in the waters and their beds are to be determined in accordance with the law of the state where the same are located as declared or construed by its courts. (Statement as to jurisdiction p. 21.)

This admission once made, it would not seem necessary to pursue the rabbit of appellants' argument much further. The distinction between "public waters" and "navigable waters" seems of little importance. As a matter of fact, by limiting the rights of riparian owners in "public waters" as it has in prior decisions, the Minnesota court has in those decisions restricted the rights of those owners more closely than in the instant case.

At the risk of unduly lengthening these objections, appellee finds it necessary, because of the partial quotations by appellants at pp. 23-27 of the statement as to jurisdiction, to make further quotations from those and other opinions, in order to present the actual prior holdings of the Minnesota court.

The cases of *Union Dept. St. Ry. Tr. Co.* v. *Brunswick*, 31 Minn. 297; *Lamprey* v. *State*, 52 Minn. 181; *Hanford* v. *St. Paul & Duluth R. Co.*, 43 Minn. 104, 112, 117; *Shell* v. *Matteson*, 81 Minn. 38, and *State* v. *Korrer*, 127 Minn. 60, 72, as well as *U. S.* v. *Holt State Bank*, 270 U. S. 49, are quite adequately analyzed in the opinion of the Minnesota Supreme Court. (Statement as to jurisdiction pp. 75-78, 81-84, 86-88; 224 Minn. 464-466, 472-473, 475-477; second record in court below pp. 20-25, 33-35, 37-40.)

COPY BOUND CLOSE IN CENTER

As to the other cases cited by appellants, we submit these brief comments.

In *Schurmeier* v. *St. Paul and Pacific Railroad Co.*, 10 Minn. 82 (Gil. 59) the court, solely by way of dictum, stated that the title to the beds of fresh water lakes and streams was in the riparian owners. Upon appeal to this Court, the final decision of the Minnesota court was affirmed because the title to the bed was not involved, but this Court in 7 Wall. 272, saw fit to expressly correct the error in the dictum of the Minnesota court by saying:

> "• • • but the better opinion is, that proprietors of land bordering on navigable rivers, under titles derived from the United States hold only to the stream, as the express provision is, that all such rivers shall be deemed to be, and remain public highways."
>
> 7 Wall. 272, 288, 289.

The decision of this Court was recognized and deferred to in *St. Paul S. & T. F. R. Co.* v. *First Division, etc., R. Co.*, 26 Minn. 31, and *Morrill* v. *St. Anthony Falls Water Power Co.*, 26 Minn. 222.

Brisbine v. *Ry. Co.*, 23 Minn. 114, simply defined the rights of riparian owners as follows:

> "According to the doctrine of these decisions the plaintiff possessed the right to enjoy free communication between his abutting premises and the navigable channel of the river, to build and maintain, for his own and the public use, suitable landing places, wharves and piers, on and in front of his land and to extend the same therefrom into the river, to the point of navigability, even though beyond low water mark, *and to this extent exclusively to occupy*, for such and like purposes, the bed of the stream, subordinate and subject only to the navigable rights of the public, and such needful rules and regulations for their protection as may be prescribed by competent legislative authority."

BLEED THROUGH – POOR COPY

Miller v. *Mendenhall*, 43 Minn. 95 dealt only with the shallows in Lake Superior between low-water mark and the point of navigability, and a careful reading of the decision shows that the holding was based not only upon riparian rights but on the fact that the legislature had authorized the establishment of a harbor line at the point of navigability and, by so doing, the state had actually made a grant to the riparian owner. In view of the present claim of appellants that the state has no right to make a transfer of property under navigable water, this language is extremely interesting:

> "The state is authorized to regulate the exercise of riparian rights in the interests of the public, and may also make concessions to private owners of possessory rights in the soil of navigable waters, the effect of which will be to give them private and exclusive rights equivalent to a grant. (Citing *Gould on Waters*, §§ 138-140.)"

The court further held that the action of the legislature in establishing a harbor line was a regulation of the exercise of riparian rights, a settlement of the line of navigability, above which the state would not interfere, and an implied concession of the right to build, possess, and occupy to the established line, which amounts practically to a qualified possessory title.

Gilbert v. *Eldridge*, 47 Minn. 210, merely followed the preceding cases of *Miller* v. *Mendenhall* and *Hanford* v. *St. Paul & Duluth R. Co.* and held as an ultimate conclusion that a riparian owner had the right to disassociate his riparian rights from the shoreland.

In *Nelson* v. *DeLong*, 213 Minn. 425, 431, the court said:

> "As against the state, a riparian owner can exercise no dominion or make a valid grant of rights in waters adjacent to riparian lands or in the submerged lands under such waters."

COPY BOUND CLOSE IN CENTER

Insofar as the rights of riparian owners were concerned, it went no further than does the instant case.

In the latest case of *Petraborg* v. *Zontelli*, 217 Minn. 536, 547, 548, the court again defined the rights of a riparian owner as these:

> "* * * he may deny access to and from the water at his particular property; he may build piers and wharves from his land out to navigable waters; he has an exclusive right of access to the lake by reason of his ownership of the abutting land; and he may claim accretions and relictions caused by changes in the current or flow of the water. (Citing *Brisbine*, *Brunswick*, and *Korrer*.) These rights, of course, are subordinate to the paramount rights of the public. (Citing *Nelson* v. *DeLong*.)"

In *Union Depot, etc., Co.* v. *Brunswick, supra*, Mr. Justice Mitchell made it very clear that when he spoke of the riparian owner having an exclusive right of possession and an entirely beneficial interest, he was speaking of "made land" in lieu of a pier *to the point of navigability*. Beyond the point of navigability he made it equally clear that a riparian owner has no right to intrude, and that if he does intrude he can claim no additional rights on account of the intrusion, and that if it were proposed to take his property for public use by the exercise of eminent domain, he could claim no additional compensation by reason of any construction beyond the point of navigability. (See 31 Minn. 302.)

With reference to *Hanford* v. *St. Paul & Duluth R. Co.*, 43 Minn. 104, of which much is made by appellants, the Minnesota court in *State* v. *St. Paul & Duluth R. Co.*, 81 Minn. 422, 425, said:

> "Riparian rights are by nature mere incidents to the shore property of which they are a part * * *. This court went quite as far as sound reason and logic would seem to warrant when it held that the owner could, at

BLEED THROUGH – POOR COPY

his option separate his riparian rights, and sell and dispose of them independently of the parent estate • • •."

In *Carpenter* v. *Board of Commissioners,* 56 Minn. 513, 520, the court said:

> "While the title of a riparian owner on navigable or public waters extends to only low-water mark yet it is unquestionably true that his title is not absolute, except to ordinary high-water mark."

Above all things, it should be kept in mind that in no decision of the Minnesota court, except as in the one isolated orphan paragraph in the *per curiam* opinion on rehearing by a divided court in *State* v. *Korrer, supra,* which was sufficiently disposed of by the court in the instant case, has there been directly involved the question of rights of the state in the beds of its navigable waters, and in no other case has the state been a party.

As to the rather labored claim of appellants on p. 29 of the statement as to jurisdiction that a lease of mining rights is an alienation thereof, appellee respectfully submits that this was a matter for state determination and the holding that the disposal of iron ore in state lands pursuant to an ordinary mining lease such as is here involved does not constitute a sale or alienation of such state lands, as had previously been held in *State* v. *Evans,* 99 Minn. 220, *State* v. *Cavour Mining Co.,* 143 Minn. 271, and other cases, presents no federal question.

COPY BOUND CLOSE IN CENTER

Conclusion

It is respectfully submitted that the appeal should be dismissed for lack of jurisdiction.

It is further respectfully submitted that since no reasonable ground for granting a petition for writ of certiorari appears, no such writ should be granted.

Respectfully submitted,

J. A. A. Burnquist,
Attorney General,
George B. Sjoselius,
Deputy Attorney General,
Wm. C. Green,
Special Assistant Attorney General,
State of Minnesota,
Counsel for Appellee,
102 State Capitol,
Saint Paul, Minnesota.

(1473)

BLEED THROUGH – POOR COPY